TEO KIM HUATT

v.

AETNA UNIVERSAL INSURANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: S5-22-384-01]
28 FEBRUARY 2002

CIVIL PROCEDURE: *Injunction - Ex parte interim injunction - Whether injunction had lapsed - Whether ought to be set aside - Cheah Cheng Lan v. Heng Yea Lee & Ors*

The plaintiff had applied for, and was granted, an *ex parte* interim injunction against the defendant. The only issue that required determination was whether the injunction ought to be set aside.

Held:

[1] Following the decision of the Court of Appeal in *Cheah Cheng Lan v. Heng Yea Lee & Ors*, the life span of the injunction that was granted on 21 May 2001 had automatically lapsed at the end of 21 days on 10 June 2001. Here, the injunction was allowed to remain even after the end of 21 days because the parties had agreed to a holding over in subsequent court sessions until the defendant objected on two occasions. Consequently, the doctrine of estoppel would come into play in favour of the plaintiff, but unfortunately, this court is bound by the decision in *Cheah Cheng Lan.* (p 155 e-g)

[Ex parte interim injunction dissolved.]

Case(s) referred to:
AG v. Albany Hotel Company [1896] 2 Ch D 696 ***(refd)***
AG v. Tomline [1877-78] 7 Ch D 388 ***(refd)***
Banque Des Marchands De Moscou (Koupetschesky) (in liquidation) v. Kindersley & Anor [1951] 1 Ch 112 ***(refd)***
Bowker v. Hunter [1783] 2 Dickens 605 ***(refd)***
Buck v. Fawcett [1733] 3 PWMS 242 ***(refd)***
Canada and Dominion Sugar Co Ltd v. Canadian National (West Indies) Steamships Ltd [1947] AC 46 ***(refd)***
Carew v. Cooper [1863-64] 12 WR 767 ***(refd)***
Cheah Cheng Lan v. Heng Yea Lee & Ors [2001] 1 CLJ 727 ***(foll)***
Cole v. Langford [1898] 2 QB 36 ***(refd)***
Combe v. Combe [1951] 2 KB 215 ***(refd)***
Davenport v. Stafford [1845] 8 Beav 503 ***(refd)***
Ex parte Banner, In re Blythe [1881] 17 Ch D 480 ***(refd)***

Ex parte Robertson, In re Morton [1875] LR 20 Eq 733 ***(refd)***
Evans v. Bartlam [1937] AC 473 ***(refd)***
Freeman & Anor, Assignees of William Broadbent v. Cooke [1848] 2 Ex 654 ***(refd)***
Furnival v. Bogle & Ors [1827] 4 Russ 141 ***(refd)***
Harriman v. Harriman [1909-10] P 123 ***(refd)***
Harrison v. Rumsey [1752] 2 Ves Sin 488 ***(refd)***
Holt v. Jesse [1876] 3 Ch D 177 ***(refd)***
Huddersfield Banking Co Ltd v. Henry Lister & Son Ltd [1895] 2 Ch D 273 ***(refd)***
In re Ottos Kopje Diamond Mines Ltd [1893] 1 Ch D 618 ***(refd)***
In re Sugden's Trusts Sugden v. Walker [1917] 1 Ch D 511 ***(refd)***
Jocelyn Brandon v. Dowager Baroness Michelham [1918-19] 35 TLR 617 ***(refd)***
Lissenden v. CAV Bosch Ltd [1940] AC 412 ***(refd)***
Low v. Bouverie [1891] 3 Ch D 82 ***(refd)***
Lyle-Meller v. A Lewis & Co (Westminster) Ltd [1956] 1 All ER 247 ***(refd)***
Mullins v. Howell [1879] 11 Ch D 763 ***(refd)***
Pickard v. Sears and Barrett [1837] 6 AD & E 469 ***(refd)***
Moorgate Mercantile Co Ltd v. Twitchings [1975] 3 All ER 314 ***(refd)***
Moss v. Leatham [1837] 2 Moore PC 72 ***(refd)***
RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd (No 1) [2002] 1 CLJ 457 ***(foll)***
Segar Restu (M) Sdn Bhd v. Wong Kai Chuan & Anor [1993] 4 CLJ 177 ***(refd)***
Smith v. Baker [1873] LR 8 CP 350 ***(refd)***
Stannard v. Harrison [1871] 19 WR 811 ***(refd)***
Teoh Tian Lai v. PP [2001] 1 CLJ 407 ***(refd)***
Wilding v. Sanderson [1897] 2 Ch D 534 ***(refd)***
Worthington & Co Ltd v. Abbott [1910] 1 Ch D 588 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 68
Rules of the High Court 1980, O. 29 r. 1(2BA), O. 56 r. 2

For the plaintiff - Rakhbir Singh (Nordina Mohd Yusof, Prakash Singh & Gurmeet Singh); M/s Rakhbir Singh & Co
For the defendant - DP Naban (Gan Khong Aik, Chong Lee Yee & Joyce Teh); M/s Lee Hishammuddin

Reported by Suresh Nathan

JUDGMENT

Abdul Malik Ishak J:

The Facts

I will not go into the merits of the case. I need to allude to the salient facts relevant to this judgment and nothing more.

On 21 May 2001, I granted an *ex parte* interim injunction against the defendant on the application by the plaintiff. I made an ancillary order that the plaintiff should give an undertaking as to damages bearing in mind that the purpose of the undertaking was to vest the court with the jurisdiction to make the appropriate orders so as to recompense the loss which the defendant may suffer in the event it is established that the plaintiff was not entitled to the *ex parte* interim injunction in the first place. The undertaking would certainly place the defendant in a better position to seek recompensation in the event it will be shown that the defendant was wrongly cited or enjoined as a party (*Attorney-General v. Albany Hotel Company* [1896] 2 Ch. D 696 at p. 699). Bearing in mind that I had to "fix a date for *inter partes* hearing to be held before the expiry of the 21 days" (see O. 29 r. 1 (2BA) of the Rules of the High Court 1980 ("RHC")), I then proceeded to fix the date of the *inter partes* hearing on 8 June 2001.

On 8 June 2001, the defendant needed time to file an affidavit-in-reply and the plaintiff had no objection. The parties magnanimously agreed that the hearing of the *inter partes* be fixed on 18 June 2001. The parties too were very amicable and they both agreed to a holding over of the order of this court dated 21 May 2001. Since both the parties had agreed to the holding over, this court made a ruling to that effect. The date for the *inter partes* hearing was then fixed on 18 June 2001.

On 18 June 2001, the defendant's counsel expressed a desire to reply to an affidavit and the plaintiff's counsel agreed and said that it was in the interest of justice that the defendant be allowed to reply. Both parties then sought for an adjournment to the next day – meaning to 19 June 2001 at 2.30pm. This court willingly obliged and made a ruling for a holding over since both the parties agreed that the injunction would continue to the afternoon of 19 June 2001 or after the submissions thereto. Thus far, counsel for both sides acted gallantly and the atmosphere was indeed pleasant. There was an air of friendliness all round.

On 19 June 2001, the learned counsel for the defendant informed this court that he had filed an affidavit yesterday – meaning on 18 June 2001 at 6.20pm. How could an affidavit be filed in the court registry at 6.20pm was beyond me. Be that as it may, it transpired that just a short while ago the plaintiff had served an affidavit-in-reply onto the defendant's counsel and now sought for time to respond to that affidavit-in-reply. The learned counsel for the defendant said that he had contacted his client – referring to the defendant, who had directed him to respond. The learned counsel for the plaintiff had no objection and he cited "justice" as his sole reason for the stand which he took. Both parties then requested for a date towards the end of the month.

This court then fixed the hearing of the *inter partes* to 28 June 2001, and this court too made a ruling to extend the holding over as agreed by both parties to that date.

On 28 June 2001, counsel for both parties proposed to take a date on 3 July 2001 for the hearing of encl. 4 which was basically for the *inter partes* hearing of the *ex parte* interim injunction as well as for the hearing of encl. 16 which was the defendant's application for the following orders:

(1) that the plaintiff's order for an *ex parte* injunction dated 21.5.2001 be set aside;

(2) that the costs of this application be borne by the plaintiff; and

(3) all other and further reliefs which this Honourable Court deems fit and proper.

Of utmost importance was this. That both parties agreed to a holding over till 3 July 2001. This court then made the rulings as sought for, namely, that the hearing of encls. 4 and 16 be fixed on 3 July 2001 and the holding over as agreed by both parties be extended till 3 July 2001.

On 3 July 2001, the learned counsel for the plaintiff was unwell and he sought for an adjournment to 11 July 2001. The learned counsel for the defendant submitted that he was always prepared to submit and he informed the court that late yesterday evening he was served with an affidavit but nevertheless he was ready to submit. However, he submitted that since the learned counsel for the plaintiff was unwell, he would not object to an adjournment. But all the same, he submitted that this time he could not agree to a holding over of the injunction because the terms of the injunction had caused tremendous hardship to the defendant to comply. For this very reason, the learned counsel for the defendant submitted that the defendant was in a dilemma and he hoped that the issue of the injunction would be settled as soon as possible. Now, this was the first time that the learned counsel for the defendant registered his protest to the holding over of the injunctive order dated 21 May 2001. In response, the learned counsel for the plaintiff submitted that when the defendant sought for an adjournment, a holding over was granted. He submitted that he tried to be magnanimous by coming up and down – it must be borne in mind that the learned counsel for the plaintiff hails from Labuan, Sabah, and that he had incurred costs on all occasions and that he never asked for anything. He submitted that if ever there was an affidavit to be filed it was because of concealment of facts which he had alluded to in his affidavit. I then fixed the date for the hearing of the *inter partes* and the setting aside of the *ex parte* injunction to 11 July 2001. I then made a ruling that the holding over be extended notwithstanding the objection of the learned counsel for the defendant.

On 11 July 2001, the learned counsel for the plaintiff submitted that there were numerous affidavits filed by both parties in relation to encls. 4 and 16 and there was a need, according to him, for me to peruse through the evidence with a toothcomb and he cited the case of *Segar Restu (M) Sdn Bhd v. Wong Kai Chuan & Anor* [1993] 4 CLJ 177 as an authority. That was a case decided by me and at p. 182 thereto, I had this to say:

> I am mindful of the salutary advice by Gill CJ Malaya (as he then was) in *Tay Seng Keng v. Tay Ek Seng Co. Sdn. Bhd.* [1978] 1 MLJ 126 FC, that it was quite impossible to say on a mere consideration of evidence given on affidavits that the guilt of the appellant had been proved beyond reasonable doubt and, consequently, the appellant's imprisonment, in that case, for contempt of Court could not be sustained. But the facts in the present application are entirely different in that they are clear as crystal and, for fear of being repetitive, the affidavits of both parties clearly point to the breaches of the Court Order by the first defendant beyond all reasonable doubt. The affidavit of the first defendant shows that he had acted under the guise and pretence of ignorance when he entered Lot 76. In fact, the first defendant apologised to this Court in his short affidavit affirmed on 16 July 1993 and this would clearly differentiate *Tay Seng Keng*'s case *(supra)* with the present application. I had occasion to say in *Lye Fong Weng & Anor. v. Deputy Minister of Home Affairs & Anor.* (Criminal Applications No: 44-6-93 & 44-7-93) that: 'After all, it had been said that sometimes the truth seeps out of an affidavit.' This would certainly be the case here. The truth simply oozed out from the affidavits of both parties.

The learned counsel for the plaintiff, then craved this court's indulgence to adjourn the matter and to proceed on 16 July 2001. He too prayed that the injunctive order be held over until 16 July 2001 or until the completion of encls. 4 and 16. Surprisingly the learned counsel for the defendant agreed to these proposals. I then adjourned the proceedings to 16 July 2001 and made a ruling that the holding over be extended, as agreed between the parties, until the completion of the *inter partes* hearing.

On 16 July 2001, the matter once again came up before me. The learned counsel for the plaintiff submitted that this was a part heard *inter partes* injunction. After alluding to the various affidavits, both parties proposed to file written submissions and I then gave directions in regard to the written submissions. I too made a ruling that the *ex parte* injunction be continued until my decisions pertaining to encls. 4 and 16 were announced on 13 December 2001.

On 13 December 2001, the decisions were not announced because counsel for both sides have yet to file their written submissions. It was pointed out that the learned counsel for the plaintiff had just filed his written submission. The learned counsel for the plaintiff sought to explain the delay by alluding to a

letter which he sent to this court on 12 December 2001 where he explained that he had to proceed to the United Kingdom to accompany his daughter for a "brain damage" supervision. Meanwhile, it was submitted on behalf of the plaintiff that this court should extend the injunctive order further. Once again the learned counsel for the defendant objected and he submitted that the injunction ought to be set aside. Reliance was placed on the decision of the Court of Appeal in *Cheah Cheng Lan v. Heng Yea Lee* [2001] 1 CLJ 727. Nevertheless, I gave further directions for the parties to file their written submissions and for their respective replies. I then fixed 27 June 2002 for my decisions pertaining to encls. 4 and 16. In the meantime, I made a ruling that the *ex parte* injunction to remain until 27 June 2002.

Analysis

I have since written a judgment where I have expressed my views in regard to the "workability" of *Cheah Cheng Lan*. That judgment of mine was delivered on 2 January 2002 and it was in regard to the Kuala Lumpur Civil Suit No: S5-22-1254-2001 between *RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd (No: 1)* where I said that I was bound to follow the decision of *Cheah Cheng Lan*, notwithstanding its infirmities, solely on the basis of the doctrine of *stare decisis*. I was told by the librarian that *RIH Services (M) Sdn Bhd v. Tanjung Tuan Sdn Bhd (No: 1)* has since been reported in two popular local law journals, namely the Current Law Journal and the citation would be [2002] 1 CLJ 457 respectively.

In this judgment, I must, once again, emphasise that I was bound to follow *Cheah Cheng Lan*. That being the case, I have no choice but to dissolve the *ex parte* injunction that was granted by me on 21 May 2001. It must be recalled that in every court session after 21 May 2001, both parties agreed to extend the *ex parte* interim injunction. Even after encl. 16 was filed, the attitude of the parties remained unchanged. On 3 July 2001, the learned counsel for the defendant, for the first time, had a change of mind and he objected to the extension of the *ex parte* interim injunction. But on 11 July 2001, the learned counsel for the defendant agreed, in a surprise move, to the extension of the *ex parte* interim injunction. Why was there a change of heart? On 13 December 2001, the learned counsel for the defendant, once again, objected to the extension of the *ex parte* injunction. As can be seen there were two objections advanced by the learned counsel for the defendant to the extensions of the *ex parte* interim injunction. The first was on 3 July 2001 and the second was on 13 December 2001.

Can't the doctrine of estoppel be used as a sword against the defendant who through their learned counsel had agreed to the extension of the *ex parte* interim injunction on those occasions as alluded to above? Lord Wright while

delivering the judgment of the Privy Council in *Canada and Dominion Sugar Company, Limited v. Canadian National (West Indies) Steamships, Limited* [1947] AC 46 at p. 55, succinctly said:

> There was, perhaps, a time when estoppels were described as odious and as such were viewed with suspicion and reluctance. Mr. Devlin has sought to apply the same test to a case where it is sought to qualify words which is unqualified would constitute an estoppel. But in more modern times the law of estoppel has developed and has become recognised as a beneficial branch of law. That great lawyer Sir Frederick Pollock has described the doctrine of estoppel as 'a simple and wholly untechnical conception, perhaps the most powerful and flexible instrument to be found in any system of court jurisprudence'.

Once a representation has been made and acted upon, the court will be reluctant to permit the person making that representation to go back on his word or even to allege a situation different from that which he had represented. In *Freeman and Another, Assignees of William Broadbent v. Cooke* [1848] 2 Ex. 654, Parke B., after citing the case of *Pickard v. Sears And Barrett* [1837] 6 AD. & E. 469, 474, said that a man is estopped from denying what he has represented not only when he represents as true that which he knows to be untrue but whatever his "real intention may be he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it and did act upon it as true." Indeed, this court had acted on the representation by the learned counsel for the defendant when the *ex parte* interim injunction was extended from time to time. Surely this court was entitled to act upon the representation of the learned counsel for the defendant "as true".

Apart from the doctrine of estoppel, there is another principle of law that requires mention. It is this. That the holding over was made with the consent of the parties. It is a correct statement of the law to say that *prima facie* once an order is made in the presence and with the consent of counsel it becomes binding on all parties to the proceedings as well as and inclusive of those claiming under them (*Stannard v. Harrison* [1871] 19 WR 811, [1871] 24 LT 570; *Harrison v. Rumsey* [1752] 2 Ves. Sin. 488; *Moss v. Leatham* [1837] 2 Moore PC 72; and *Worthington & Co., Limited v. Abbott* [1910] 1 Ch. D 588); and that order can never be varied or discharged unless the order was obtained by fraud, or collusion, or by an agreement contrary to the policy of the court (*Buck v. Fawcett* [1733] 3 PWMS 242; *Cole v. Langford* [1898] 2 QB 36; and *Bowker v. Hunter* [1783] 2 Dickens 605, 611). Here, as can be seen from the narration of the facts, when the parties agreed by consent to the holding over of the *ex parte* interim injunction on every occasion there was no fraud nor collusion nor were the parties acting contrary to the policy of the court.

Of pertinence would be the fact that the parties agreed by consent to the holding over through counsel of their own choice. This was certainly not the case where the consent was given without sufficient materials or in complete misapprehension or in total ignorance of material facts (*Wilding v. Sanderson* [1897] 2 Ch. D 534 CA; *Huddersfield Banking Company, Limited v. Henry Lister & Son, Limited* [1895] 2 Ch. D 273 CA; *Holt v. Jesse* [1876] 3 Ch. D 177, 183; *Davenport v. Stafford* [1845] 8 Beav. 503, 508; *Furnival v. Bogle And Others* [1827] 4 Russ. 141, 142; *Ex parte Banner., In re Blythe* [1881] 17 Ch. D 480, CA; *Carew v. Cooper* [1863-64] 12 WR 767; and *Attorney-General v. Tomline* [1877-78] 7 Ch. D 388). This was also not the case where the consent was obtained by mistake on the part of one party (*Mullins v. Howell* [1879] 11 Ch. D. 763); nor was this a case where the mistake was induced by the other party, namely, the plaintiff (*Wilding v. Sanderson (supra)*). Pure and simple there was no mistake at all on the part of the learned counsel for the defendant when he consented to the holding over.

I am told that the defendant has filed an appeal against my ruling that was made on 13 December 2001 when I ruled that the *ex parte* injunction to remain until 27 June 2002. A ruling can never be equated to a judgment, sentence or order. By way of a comparison, reference should be made to the case of *Teoh Tian Lai v. Public Prosecutor* [2001] 1 CLJ 407, a decision of the Court of Appeal, where the court held, *inter alia*, that the decision of the High Court in ordering the applicants to enter their defence was a ruling that did not have the effect of finally disposing of their rights. At any rate, my ruling on 13 December 2001 was not caught by the definition of the word "decision" as set out in s. 3 of the Courts of Judicature Act 1964. That section is an interpretation section and it interprets the word "decision" in this way:

> 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

Incidentally, O. 56 r. 2 of the RHC states as follows:

> Subject to the provisions of section 68 of the Act, a party may appeal against any judgment, order or decision made by a Judge in Chambers.

and it is quite apparent that a "ruling" is outside the scope and ambit of the said Order. Section 68 of the Courts of Judicature 1964 is of equal importance. That section enacts as follows:

> 68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

(b) where the judgment or order is made by consent of parties;

(c) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal; and

(d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) (Repealed by Act A886).

(3) No appeal shall lie from a decision of a Judge in Chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

Now, as presently worded, s. 68 of the Courts of Judicature Act 1964 is entirely silent in regard to a "ruling" made by a judge in chambers. But since a "ruling" is not a "decision" within the meaning of s. 3 of the Courts of Judicature Act 1964, the defendant could not even appeal against my ruling that was handed down on 13 December 2001. These exercises are certainly food for thought for the initiated. Be that as it may, in the final analysis, the decision of the Court of Appeal in *Cheah Cheng Lan* posed a barrier to the plaintiff. Shackled by *Cheah Cheng Lan*, the days of the plaintiff are numbered. In reality, the life span of the *ex parte* interim injunction that was granted on 21 May 2001 had automatically lapsed at the end of 21 days from the date on which it was granted. Calculation wise the *ex parte* interim injunction should "automatically lapse" on 10 June 2001. Here, the *ex parte* interim injunction was allowed to remain even after the end of the 21 days because, firstly, the parties agreed to a holding over on those days as alluded to above and, secondly, there was consent all round to a holding over on those days as alluded to above. Consequently, the doctrine of estoppel would come into play in favour of the plaintiff. But, unfortunately, with the advent of *Cheah Cheng Lan* all these legal niceties would die a natural death. What a pity.

The law books are replete with authorities on estoppel. But in construing the life span of an *ex parte* interim injunction as alluded to in *Cheah Cheng Lan*, the doctrine of estoppel wherein the defendant through its learned counsel agreed to the holding over seemed to be of no consequence at all. Of course, estoppel has often been described as a rule of evidence (*Low v. Bouverie* [1891] 3 Ch. D 82 at 102, CA; *Lyle-Meller v. A. Lewis & Co. (Westminster), Ltd* [1956] 1 All ER 247 at 252, 253, [1956] 1 WLR 29 at 39, 40, CA; *In re Ottos Kopje Diamond Mines, Limited* [1893] 1 Ch. D 618 at 628, CA; *Harriman v. Harriman* [1909-10] P. 123 at 144, CA; *Jocelyn Brandon v.*

Dowager Baroness Michelham [1918-19] 35 TLR 617; *In re Sugden's Trusts. Sugden v. Walker* [1917] 1 Ch. D 511; and *Combe v. Combe* [1951] 2 KB 215, [1951] 1 All ER 767, CA), but I prefer to accept it as a substantive rule of law *(Canada and Dominion Sugar Company, Limited v. Canadian National (West Indies) Steamships, Limited (supra)* particularly at p. 56, PC; and *Moorgate Mercantile Co. Ltd. v. Twitchings* [1975] 3 All ER 314 at 323, [1975] 3 WLR 286 at 296). In law, there are four kinds of estoppel, namely:

(1) estoppel of record or quasi of record;

(2) estoppel by deed;

(3) estoppel in *pais*; and

(4) promissory estoppel.

In this exercise, I am only concerned with estoppel in pais which arise from the conduct of the learned counsel for the defendant who blew "hot and cold" in regard to the holding over. It is often said that a person should not approbate and reprobate (*Lissenden v. C.A.V. Bosch, Limited* [1940] AC 412 at 417, 418, [1940] 1 All ER 425 at 429). It simply means that when a person has a choice between two courses of conduct and he picks and elects one choice of conduct, he cannot later resile from it. Here, the learned counsel for the defendant agreed to the holding over in order to file an affidavit in reply and he has benefited from that course of conduct and subsequently he cannot resile from it. By resiling, his subsequent conduct was in fact inconsistent with his earlier conduct. In short, he cannot approbate and reprobate (*Banque Des Marchands De Moscou (Koupetschesky) (In Liquidation) v. Kindersley And Another* [1951] 1 Ch 112 at 119, 120, [1950] 2 All ER 549 at 552 where his Lordship Sir Raymond Evershed MR cited with approval the following cases:

(a) *Smith v. Baker* [1873] LR 8 CP 350;

(b) *Ex parte Robertson, In Re Morton* [1875] LR 20 Eq 733;

(c) *Evans v. Bartlam* [1937] AC 473 at 479, [1937] 2 All ER 646 at 649, HL).

But alas, in the context of *Cheah Cheng Lan*, all these legal niceties would come to nought.

Conclusion

For the reasons adumbrated above, I now make a ruling that the *ex parte* interim injunction that was handed down on 21 May 2001 be dissolved forthwith. I too make a ruling that the undertaking as to damages by the plaintiff be assessed by the learned senior assistant registrar.